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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66949; File No. SR-EDGX-2012-16)

May 9, 2012

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending Certain Sections of its Current Bylaws

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 25, 2012, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of the Amended and Restated Bylaws of EDGX Exchange, Inc. (the "Current Bylaws") to conform with the Exchange's current corporate governance practices. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's website at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain sections of the Current Bylaws to conform with the Exchange's current corporate governance practices. In addition, the Exchange proposes to address other non-substantive revisions to reflect changes since the Securities and Exchange Commission (the "SEC" or the "Commission") granted the Exchange's registration as a national securities exchange in March 2010.<sup>3</sup>

Board of Directors

Article III, Section 5 of the Current Bylaws state that the Chief Executive Officer shall also be the Chairman of the Board of Directors (the "Board"). The Exchange proposes to revise this provision in the New Bylaws to state, "[t]he Directors shall choose among themselves who will be the Chairman of the Board (the "Chairman"), who may also be the Chief Executive Officer," because the Exchange believes separating the two roles is a good corporate governance practice and provides the Board additional flexibility when determining the Chairman. In addition, the Exchange proposes to add clarifying language that states that if the Chief Executive Officer or other member of management of the Exchange is the Chairman, then he or she shall not participate in executive sessions of the Board. The Exchange believes this amendment helps to preserve the purpose of the executive session, which is for the Board to meet without the Exchange's management present. Similarly, the Exchange proposes to make a conforming

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<sup>3</sup> See Securities and Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

amendment to Article VII, Section 6, to provide that the Chief Executive Officer may be the Chairman of the Board.

#### Committees of the Board

The Exchange's Board consists of an Appeals Committee, an Audit Committee, a Compensation Committee, an Executive Committee and a Regulatory Oversight Committee (collectively, the "Board Committees"). In Article V, the Exchange proposes to amend the Current Bylaws to more fully describe the responsibilities of the Board Committees and to be consistent with the provisions of the Board Committees' charters.

In Article V, Section 5(a), the Exchange proposes to amend the Current Bylaws to state that the Compensation Committee is also responsible for assisting the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as a Self Regulatory Organization ("SRO").

In Article V, Section 5(b) (proposed to be re-numbered as Section 5(b)(i) - (vii)), the Exchange proposes to amend the Current Bylaws to state that the Audit Committee is also responsible for assisting the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; taking appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; overseeing all activities of the Exchange's internal audit function, including management's responsiveness to internal audit recommendations and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, selecting and replacing and determining the compensation of the

third party provider), in consultation with management; and overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to amend the language in Article V, Section 5(b)(iv) and (v), respectively, to elaborate on the Audit Committee's responsibility to provide oversight over the systems of internal controls, technology and information integrity established by management and the Board and the Exchange's legal and compliance process as well as to further clarify the Audit Committee's responsibilities around independent auditors.

In Article V, Section 5(c), the Exchange proposes to amend the Current Bylaws to elaborate on the Regulatory Oversight Committee's duties to assist the Board in fulfilling its responsibilities to oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Securities and Exchange Act of 1934 (the "Act"). The Exchange also proposes to amend the language in Article V, Section 5(c) to clarify that the Regulatory Oversight Committee's responsibility to oversee the overall effectiveness of the Exchange's performance of its regulatory functions.

In Article V, Section 5(e), the Exchange proposes to amend the Current Bylaws to clarify that the Executive Committee is also responsible for facilitating coordination of the Board processes among other things.

#### Committees of the Exchange

The Exchange proposes to amend the title of Article VI from "Nominating and Governance Committees" to "Committees of the Exchange" in the New Bylaws because this section includes the Nominating and Governance Committees and the Exchange Member Nominating Committee.

In Article VI, Section 2, the Exchange proposes to amend the Current Bylaws to elaborate on the Nominating and Governance Committee's responsibilities to develop and recommend governance policies to the Board and to oversee an orientation for new Directors. The Exchange also proposes to amend the language in Article VI, Section 2 to clarify that the Nominating and Governance Committee nominates Director candidates and chairpersons to serve on the Board's Committee. Other non-substantive grammatical and stylistic changes are also proposed.

In Article VI, Section 3, the Exchange proposes to amend the Current Bylaws to state that the Exchange Member Nominating Committee is also responsible for nominating candidates for all other vacant or new Exchange Member Director positions on the Board.

#### Officers, Agents and Employees

Article VII of the Current Bylaws state that the officers of the Exchange include a President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, among others. However, the Exchange has not now or ever designated a person to be a President, Vice President, Assistant Secretary, Treasurer or Assistant Treasurer. In addition, the duties enumerated in the Current Bylaws are currently performed by other employees at the Exchange. Specifically, the Chief Executive Officer has general supervision over the operations of the Exchange. In addition, the Chief Executive Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of President and Vice President in the event of the Chief Executive Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 7 and 8 that refer to the responsibilities of the President and the Vice President since these responsibilities are included within the role of the Chief Executive Officer, which is generally described in Article VII, Section 6.

In addition, the Secretary will delegate to certain Exchange employees the powers and duties usually incident to the office of Secretary in the event of the Secretary's absence.

Therefore, the Exchange proposes deleting the provisions in Article VII, Section 11 that refers to the responsibilities of the Assistant Secretary. Similarly, the Exchange proposes making a non-substantive stylistic change to move the placement of the reference to the "Secretary" in Article VII, Section 1.

Lastly, the Chief Financial Officer has general supervision over the powers and duties usually incident to the office of the Treasurer. The Board approves the appointment of a Chief Financial Officer in the form of a Board resolution annually. In addition, the Chief Financial Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of Treasurer and Assistant Treasurer in the event of the Chief Financial Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 12 and 13 that refer to the responsibilities of the Treasurer and Assistant Treasurer. Similarly, the Exchange proposes making a conforming amendment to delete the reference to the Treasurer in Article VII, Section 1.

In addition, the Exchange proposes to replace references to the President with the Chief Executive Officer, where applicable, given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. The Exchange's proposed revisions include the following specific amendments:

Article III, Section 7(b) of the Current Bylaws states, "Any Director may resign at any time either upon notice of resignation to the Chairman, the President or the Secretary." The Exchange proposes to replace the reference to "the President" with "the Chief Executive

Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article III, Section 10(a) of the Current Bylaws states, “Special meetings of the Board may be called on a minimum of two (2) days notice to each Director by the Chairman or the President, and shall be called by the Secretary upon the written request of three (3) Directors then in office.” The Exchange proposes to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article IV, Section 2 of the Current Bylaws states, “Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote.” The Exchange proposes to replace the reference to “the President” with the “Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 1 of the Current Bylaws states, “The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer and such other officers as in the Board’s opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person.” The Exchange proposes to delete the references to the Treasurer and to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 3 of the Current Bylaws states, “Any officer may resign at any time upon notice of resignation to the Chairman, the President or the Secretary.” The Exchange proposes to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. In addition, the Exchange proposes to add language stating that an officer may also resign to a designee of the Board, if none such officers are then-appointed, in order to improve the Exchange’s governance framework by providing for an additional option should the Chief Executive Officer or Secretary not be appointed at the time of the officer’s resignation.

In addition, in Article VII, Section 9 (proposed to be re-numbered as Section 7), the Exchange proposes to make conforming amendments to delete the references to “Executive Vice President” or “Senior Vice President” to describe the type of officer that may be designated as the Chief Regulatory Officer.

#### Article XI: Miscellaneous Provisions

In Article XI, Section 7(a) (proposed to be re-numbered as Section 6(a)), the Exchange proposes to specifically identify the persons authorized as signatories of all checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money that are signed in the name of the Exchange. The New Bylaws will state, “All checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate, or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time



designate (collectively, the “Authorized Officers”).” The Exchange proposes to make conforming amendments to the provisions in Article XI, Section 7(b) (proposed to be re-numbered as Section 6(b)) in order to permit any Authorized Officer of the Exchange to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Company.

The Current Bylaws do not address stock certificates and uncertificated shares. Therefore, the Exchange proposes to add Article XI, Section 10 in the New Bylaws to state, “[t]he shares of the Exchange may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Exchange’s stock shall be uncertificated shares. Every holder of stock of the Exchange represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate (if any) shall be signed in a manner that complies with Section 158 of the DGCL.”<sup>4</sup>

#### Miscellaneous Non-Substantive Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Current Bylaws.

The Exchange proposes to include the date that the Current Bylaws were amended on the title page to notify Members of the effective date of the New Bylaws.

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<sup>4</sup> The DGCL refers to Delaware General Corporation Law.

The Exchange proposes to re-number various sections of the Current Bylaws in order to eliminate gaps in the numbering and/or lettering of the sections resulting from the proposed revisions as described in Exchange’s rule filing.

The Exchange proposes to delete the defined terms “broker” in Article I, paragraph (d), and “dealer” in Article I, paragraph (j) since neither term is referenced again in the Current Bylaws.

The Exchange proposes to amend the reference to the “Holdings Operating Agreement” in Article I, paragraph (u) (proposed to be re-numbered as paragraph (s)), to notify Members that the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, that was revised on June 12, 2010, is currently in effect.

In Article I, paragraph (v) (proposed to be re-numbered as paragraph (t)), the Exchange proposes to replace the reference to the “EDGX Exchange, Inc.” with “EDGA Exchange, Inc.” to correct a typographical error.

The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the New Bylaws. Specifically, the Exchange proposes to delete references to the Operational Date in Article I, paragraph (y) and Article XI, Section 1 because the Commission granted the Exchange’s registration as a national stock exchange on March 12, 2010.<sup>5</sup> Therefore, these references to the Operational Date are obsolete.

Similarly, the Exchange proposes to delete provisions regarding the initial Board in Article III, Section 2(a), and the initial Nominating and Governance Committee and the initial Exchange Member Nominating Committee in Article VI, Section 1, since these appointments have already occurred. Similarly, the Exchange proposes deleting Exhibits A and B in the

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<sup>5</sup> See also, supra note 3.

Current Bylaws as this information is obsolete. The Exchange proposes to omit Exhibits A and B in the New Bylaws because the Exchange updates this information through the Commission's Form 1 amendment (Exhibits C and J),<sup>6</sup> which is submitted to the Commission within 10 days of a change to the Board of Directors or Committee members.

The Exchange proposes to correct a typographical error in Article I, paragraph (cc) (proposed to be re-numbered as paragraph (z)), by referencing “an” Exchange in the New Bylaws.

The Exchange proposes to correct a typographical error by deleting “and Governance” in Article III, Section 6(b) when identifying the Exchange Member Nominating Committee.

The Exchange proposes to insert “of” and delete “or” in Article IX, Section 3(a) to correct a typographical error. Therefore, the New Bylaws will state, “. . . the trading in, or operation of, the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all Persons or the trading therein of any or all securities . . .” (emphasis added).

In Article XI, Section 9 (proposed to be re-numbered as Section 8), the Exchange proposes to clarify that “PDF or similar transmission,” where the receipt can be confirmed, will satisfy the notice requirement.

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<sup>6</sup> The Exchange regularly updates its Form 1 application pursuant to Rule 6a-2 of the Act.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b)(1) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act and Section 6(b)(5)<sup>8</sup> of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

Specifically, the proposed amendments to certain provisions will conform the Current Bylaws with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.<sup>9</sup>

In addition, these proposed amendments will improve efficiency and coordination among the Board and its Committee's by revising the Current Bylaws to clearly delineate each Committee's responsibilities. The proposed amendments will also benefit the Exchange and its Members because the New Bylaws will reflect the current governance structure, including the responsibilities of its officers thereby increasing the transparency of this process.

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<sup>7</sup> 15 U.S.C. 78f(b)(1).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See also, supra note 3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6)<sup>11</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.<sup>12</sup>

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

The proposed amendments to certain provisions of the Current Bylaws are designed to conform with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.<sup>13</sup> For the foregoing reasons, this rule qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission.

EDGX further requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes operative. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. It will enable the Exchange to immediately adopt the New Bylaws which should provide an enhanced, more transparent governance structure for the Exchange and its Members. The Commission designates the proposed rule change as operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>13</sup> See also, supra note 3.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2012-16 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGX-2012-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2012-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).